No. 3039

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

QUAN HING SUN and JUNG LIM,
Appellants,

vs.

EDWARD WHITE,
Commissioner of Immiration of the
Port of San Francisco,
Appellee.

OPENING BRIEF FOR APPELLANTS

Upon Appeal From the Southern Division of the United States District Court for the Northern District of California. First Division.

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FRANK D. MONCKTON, Clerk.

By.....Deputy Clerk.

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STATEMENT OF THE CASE

This is an appeal from an order of the United States District Court for the Northern District of California, Southern Division, First Division thereof, denying the petition for a writ of habeas corpus, and ordering the remand of the detained, Quan Hing Sun, the appellant herein. This appellant, Quan Hing Sun, applied to enter the United States as a citizen thereof, he claiming to be the foreign born son of a native-born citizen of the United States. His claim was based under Section 1993 of the Revised Statutes, which is as follows:

> "All children heretofore born or hereafter born out of the limits and jurisdiction of the United States, whose fathers were or may be at the time of their birth citizens thereof, are declared to be citizens of the United States; but the rights of citizenship shall not descend to children whose fathers never resided in the United States."

Shortly prior to the arrival of this applicant at the port of San Francisco, the Commissioner General of Immigration, with the approval of the Secretary of Labor, had issued and promulgated Rule 9 of the Immigration Rules and Regulations, which is set forth in Tr. 15-17. The object and purpose of this Rule 9 was to place into operation the construction which the said officials of the Department of Labor placed upon the said section 1993. Their contention was that the citizenship provided for in section 1993 was not the direct citizenship of the foreign born child, but on the contrary, that it was a sort of naturalization or a communicated status, and that the applicant for whom the benefits of citizenship were intended, must be a dependent member of his father's household; he must still be a minor; and must prove his case by evidence arbitrarily graded in the degree of its sufficiency with respect to the age of the applicant; if the native-born father died prior to the application of his foreign-born son to enter the United States, he could not enter because there was then no citizenship left to be communicated to his son applying to enter the land of his deceased father's nativity. It was further contended by them that this status of citizenship could not be so communicated after the foreign born son had attained

his majority, and in the case where the son was still a minor it could only be communicated where the son was a dependent member of his father's household. This Rule 9, with the contentions which prompted the same, was the subject of various decisions by the lower Court herein, contemporaneous with the application of this appellant to enter the United States, which will be hereafter set forth:

Quan Hing Sun arrived at the port of San Francisco on the steamship "China" the 11th of March, 1916, and made application to enter the United States as a citizen thereof by virtue of being the foreign born son of Quan Hay, now deceased, who was a native-born citizen of the United States. [Tr. 3.] The Commissioner of Immigration under Rule 3 of the Regulations governing the admission of Chinese persons to the United States, caused the appellant to be first examined under the General Immigration Law, where he was found admissible, and then caused him to be examined under the Chinese Exclusion or Restriction Acts, where his application to enter the United States was denied. Upon appeal to the Secretary of Labor, this excluding decision was affirmed. The testimony presented before the Commissioner conclusively established, and indeed it was admitted, that the said Quan Hay, now deceased, was a native-born citizen of the United States of America. It was also established and conceded that Quan Foo, Quan Hay's brother, and the uncle of this applicant, Quan Hing Sun, and who brought Quan Hing Sun to this country from China with him, was also a native-born citizen of the United

States of America, and he was admitted by the Commissioner of Immigration as such citizen of the United States. The evidence presented upon behalf of Quan Hing Sun consisted of his own testimony, the testimony of his uncle, Quan Foo, and an identifying witness, Quan Shew Hay. It is claimed that the evidence presented was of such a conclusive kind and character, that to disregard the same was an abuse of discretion upon the part of the immigration officials. It is further claimed that by reason of Rule 9, hereinbefore mentioned, they weighed and construed the testimony in an arbitrary manner, and viewed the application of this appellant to enter the United States with hostility, and deprived the appellant of the fair hearing of his application to enter the United States to which he was entitled to. In considering the testimony of Quan Hing Sun, the appellant, it must be borne in mind that he was, at the time he was examined, a child eight years of age, and it is the contention of the appellant that the immigration authorities abused their discretion in fixing an arbitrary standard by which the testimony of this little child should be weighed. In other words, maintaining that because his native-born citizen father was dead, that they would require this appellant to meet a higher standard because he was with and to remain and live with his uncle than they would have required had he come to live with his father, thus in substance and effect carrying out the intention expressed in said Rule 9.

ARGUMENT

There are two points involved in this case. First, whether a citizen of this country of Chinese extraction coming here from abroad is not entitled, as a matter of right, to have his citizenship determined in the same way and under the same law by which all other citizens of this country have their citizenship determined? Second, whether there was an abuse of discretion on the part of the immigration officials in disregarding the evidence of citizenship presented by and on behalf of Quan Hing Sun.

First—It is maintained that all citizens of this country, without distinction, returning from abroad, are entitled to have their citizenship determined in exactly the same way. Rule 3 of the Regulations governing the admission of Chinese persons to the United States provides that Chinese shall be examined first, as to the right of admission under the laws regulating Immigration. *Ex parte Wong Tuey Hing,* 213 Fed. 112 [Page 114] General Immigration Act of 1907, 34 Stat. 898, in sections 24 and 25 thereof, it is provided in part as follows:

> "Sec. 24. . . . . Immigration officers shall have power to administer oaths and to take and consider evidence touching the right of any alien to enter the United States, and, where such action may be necessary, to make a written record of such evidence. . . . . The decision of any such officer, if favorable to the admission of any alien, shall be subject to challenge by any other immigration officer, and such challenge shall operate to take the alien whose right to land is so challenged before a board of special inquiry for its investiga-

tion. Every alien who may not appear to the examining immigrant inspector at the port of arrival to be clearly and beyond a doubt entitled to land shall be detained for examination in relation thereto by a board of special inquiry.

"Sec. 25. That such boards of special inquiry shall be appointed by the commissioner of immigration at the various ports of arrival as may be necessary for the prompt determination of all cases of immigrants detained at such ports under the provisions of law. Each board shall consist of three members, who shall be selected from such of the immigrant officials in the service as the Commissioner General of Immigration with the approval of the Secretary of Labor, shall from time to time designate as qualified to serve on such boards: . . . . . "

In the present case instead of appointing a Board of Special Inquiry, the Commissioner of Immigration proceeded to determine the citizenship of Quan Hing Sun under the method and gauge provided by the Chinese Exclusion Laws, which provide for an entirely different procedure. Under the General Immigration Law, the Commissioner of Immigration is purely an executive officer, the *quasi* judicial function of determining the case being vested in the immigration inspectors, first singly and then grouped in a Board of Special Inquiry. Under the Chinese Exclusion Laws the individual inspector examines and reports upon the case much as a referee would, and the commissioner of immigration then exercises the *quasi* judicial function of determining the case. In each instance a right of appeal exists from an adverse conclusion to the Secretary of the Department of Labor. The immi-

gration procedure allows a complete inspection of the entire record including the findings and reasonings of the Board of Special Inquiry. The procedure under the Chinese Exclusion Laws withholds this matter from the applicant for admission, only advising him of the final result. It is maintained that there cannot be two separate ways of determining American citizenship with due regard to the equal rights of all citizens before the law. In *U. S.* vs. *Sing Tuck,* 194 U. S. 161, it is held that:

> "Considerations similar to those which we have suggested lead to a further conclusion. Whatever may be the ultimate rights of a person seeking to enter the country, and alleging that he is a citizen, it is within the power of Congress to provide at least, for a preliminary investigation by an inspector, and for a detention of the person until he has established his citizenship in some reasonable way. If the person satisfies the inspector he is allowed to enter the country without further trial."

The Sing Tuck decision is the forerunner of the Jew Toy case [198 U. S. 253], which in turn was followed by the Chin Yow case [208 U. S. 8]. In all of these cases it is noteworthy to observe that the point here urged is not discussed. In the Sing Tuck case, however, it is rather assumed that citizenship is determined by immigration inspectors.

The prejudicial result of trying the Quan Hing Sun case under the Chinese Exclusion Laws is at once apparent. Immigration Inspector Becktell, who tried the case of Quan Hing Sun, would, under the procedure set forth in the General Immigration Law,

simply have held him to answer before a Board of Special Inquiry and he would not have been thereafter qualified to sit upon the Board and hear and determine Quan Hing Sun's right to enter the United States. In the case of *United States* vs. *Redfern*, 180 Fed. 500, at pages 501 and 502, it is held as follows:

> "It is fundamental in American jurisprudence that every person is entitled to a fair trial by an impartial tribunal, and a board of special inquiry constituted as in this case is at least open to suspicion. I do not believe that the law contemplates that the inspector who makes the preliminary examination shall serve on the board of special inquiry, and I must hold in this case that the board which denied to petitioner the right to land was illegal and without power."

In the present case it is at once seen that the vice of the procedure followed far exceeds that which was found to constitute unfairness in *United States* vs. *Redfern, supra.* In the case just cited, the inspector was held to be disqualified from even sitting upon or participating in the deliberations of the Special Board of Inquiry which would have consisted of two officers besides himself, so at least there would have been a chance of the two other immigrant inspectors not following his adverse opinion, whereas in the present case the inspector who was to have held Quan Hing Sun to answer before a Board of Special Inquiry would have thus exhausted his legal capacity to further act in the case, had the hearing been held under the General Immigration Law, but what actually was done was that this same inspector, notwithstanding the dis-

qualification for which we have contended he, in effect in his future conduct in the case, usurped the functions that should have been discharged by an entire Board of Special Inquiry, because was alone the examining inspector who came in contact with the witnesses and observed their manner of testifying and their conduct and demeanor while under examination, and he, to all intents and purposes, decided the case adversely, for while the Commissioner in law actually decides the case, he does so without coming personally in contact with the principals, and acts upon the recommendation of his subordinate officers. It is therefore submitted that the class of procedure under which Quan Hing Sun's case was tried was vastly prejudicial to his rights when we consider what the procedure would have been had his case been examined and the issue of citizenship determined under the General Immigration Law, where he would have had a regular hearing before a Board of Special Inquiry consisting of three immigration inspectors, excluding the first examining inspector.

Second—It is maintained that there was an abuse of discretion on the part of the immigration officials in disregarding the evidence of citizenship presented by and on behalf of Quan Hing Sun.

The appellant submits under this head that the immigration service of the United States, by reason of the promulgation of this Rule 9, have evinced a hostility to the absolute citizenship provided for in Section 1993 of the Revised Statutes. That this hostility has caused them to look upon the cases of the foreign-born sons of

native-born American citizens in a different way than they look upon native-born citizens of the United States. In fact, that instead of recognizing the absolue citizenship provided for in this section of the Revised Statutes, they have regarded it as a sort of naturalization or communicated status, and evinced somewhat of a hostility to these foreign-born citizens, and have subjected them to rules of evidence and rules of procedure which they have not sought to apply to native-born citizens of the United States. The important part of the present case is that because of the death of the father of Quan Hing Sun it was attempted to deny him the absolute citizenship provided for by the said Statute. The decisions of the United States District Court for this District in which this hostility is judicially determined are as follows: *Ex parte Wong Foo,* 230 Fed. 534; *ex parte Leong Wah Jam,* 230 Fed. 540; *ex parte Ng Doo Wong,* 230 Fed. 751; *ex parte Lee Dung Moo,* 230 Fed. 746, and *ex parte Tom Toy Tin,* 230 Fed. 747. Each of these five cases were decided by Judge Dooling, who presides over the District Court for this Division. The Government did not effect an appeal from any of these five cases, but referred the question of law involved to the Attorney General of the United States for his opinion, and this opinion, which was rendered on April 27, 1916, was against the contention of the immigration authorities and supported the principles of law enunciated by Judge Dooling in the matter of Wong Gin Tun and Wong Shim Gim.

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In *ex parte Lee Dung Moo, supra,* Judge Dooling

held, on page 747, as follows:

> "It is manifest from the foregoing quotations, and indeed has also appeared from records submitted here in other cases, that the Immigration Bureau looks upon this statute, in so far as it may be applicable to persons of the Chinese race, with an unfriendly eye. The absolute citizenship therein provided for, and the rights pertaining to such citizenship, are regarded as 'at best only technical,' while to the plain language of the statute is added by construction the provision that it does not apply, unless the foreign-born child of the American citizen shall learn the English language and come to the United States before he is 25 years of age. I conceive it to be the duty of executive as well as of judicial officers fairly and freely to administer the laws of Congress as they find them, whether they agree with the policy or purpose of such laws or not. In the instant case the very law which would entitle the applicant to admission into this country is regarded with such hostility as to be cast into the balance against him. If applicant is the son of a resident American citizen, he, too, is a citizen, and entitled to every right as such. The question of relationship should therefore be fairly investigated, with a view to ascertain the truth, and with a perfect willingness to admit him as a citizen under this law, instead of being investigated in a spirit hostile to the law, which lacking the power to repeal, accomplishes the same result by denying to it effect. When one's right as a citizen is examined in that spirit, the hearing given him appears to me to be anything but fair."

In *ex parte Ng Doo Wong, supra*, Judge Dooling held on page 752, as follows:

> "If this means anything, it means that, no matter what the proof, a foreign-born son of a Chinese native will not be admitted to this country, notwithstanding his citizenship, unless he applies for

admission during his minority or shortly thereafter. But the statute [section 1993, R. S. Comp. St. 1913, p. 3947] is as follows:

> "'All children heretofore born or hereafter born out of the limits and jurisdiction of the United States, whose fathers were or may be at the time of their birth citizens thereof, are declared to be citizens of the United States; but the rights of citizenship shall not descend to children whose fathers never resided in the United States.'

"To this statute the Department is adding by construction this proviso:

> "'Provided such children shall come to the United States during their minority.'

"Doubtless Congress might have attached such a proviso, but I do not think the Department has such power. If petitioner is the son of a citizen of the United States, he himself is such citizen, though born abroad and remaining abroad until 27 years of age. Such citizenship is of little value to him, if he may be excluded from this country by the arbitrary rejection of the testimony offered by him solely because he did not, in the opinion of the Department, apply for entry in time. The findings of the Department are conclusive, when supported by evidence, but not when based upon an erroneous construction of the law."

In *ex parte Leung Wah Jam, supra,* it is held by Judge Dooling, on page 541, as follows:

> "This court has recently decided in several cases that when the question of relationship between a citizen of the United States and his alleged son, born in China, is determined adversely, for reasons similar to those above set forth, the hearing resulting in such determination is not fair. Here a favorable determination on the part of the examining inspector is set aside by the Commissioner

and the Assistant Secretary because of the lack of evidence of a 'spirit of American allegiance,' not only on the part of petitioner, but also on the part of his father.' The record does not show any investigation as to whether the father has 'indicated any tendency to Americanism,' and if this consideration could properly be used against petitioner in the investigation of the relationship claimed to exist it should be based upon proof as of any other fact."

In *ex parte Wong Foo, supra,* it is held by Judge Dooling, on page 535, as follows:

"If the applicant is in reality the son of an American citizen, even though it be a citizen of Chinese descent, he also is such citizen, and entitled to enter this country as such. The inquiry of the immigration department should be directed, of course, in good faith to the ascertainment of that fact. The burden of proving such relationship is undoubtedly upon the applicant. But that burden should not be increased by throwing extraneous matters into the scales against him. If, indeed, the proof offered by him is to be weighed in the light of his 'father's sense of allegiance to this country,' then certainly that sense of allegiance must be determined in the same manner as any other material fact; that is to say, from the record. I should be loth to hold that the rights of a citizen of this country, even though such citizen were born in China, may be dependent upon the notion of some officer that the father of such citizen had not manifested a proper sense of allegiance; but in this case it is not necessary to pass upon that question, for the reason that it does not appear from the record here that the father's sense of allegiance was ever inquired into at all. It is just assumed without any proof whatever, that 'the father's sense of allegiance is clearly to the country of his ancestors and not to this country.' If the father's sense of allegiance is a proper matter

to be weighed against the applicant, which is questioned here, but not decided, such sense of allegiance must be proved as any other fact. It was evidently the controlling factor in the adverse decision of the Assistant Secretary, and the hearing accorded to the applicant was to that extent unfair."

And lastly, in *ex parte Tom Toy Tin*, it is held by Judge Dooling, on page 749, as follows:

"The view that the citizenship of a person of the Chinese race, who, though born in China, is the son of a native-born American citizen, is a 'technical' instead of a real one, seems to have originated in the Bureau at Washington, and to have drifted downwards through the service until it has inoculated the examining inspectors, so that the apparent purpose of their examination is, not to ascertain the truth, but to exclude all Chinese who, claiming to be citizens by virtue of the citizenship of their fathers, have failed to come to this country during their minority. That the immigration officers have the sole power to pass upon the facts after a fair hearing is not disputed, and has never been disputed, by this court. But the court has several times held in recent cases that a fair hearing is not accorded when the examination, as to relationship, is had in a spirit hostile to that law which provides that:

"'All children heretofore born or hereafter born out of the limits and jurisdiction of the United States, whose fathers may be at the time of their birth citizens thereof, are declared to be citizens of the United States.'

"And where the record itself discloses the fact that the evidence is weighed in that spirit of hostility to the plain provisions of the statute the court is driven to the conclusion that the hearing was unfair."

And again, on pages 749 and 750, as follows:

"Here it is urged that the alleged father, whose citizenship is not questioned, 'has never taken advantage of his rights as an American citizen.' It is in the record that he has so far taken advantage of his rights as to live in this country all his life, save for one trip to China, at which time he claims to have been married and to have begotten the applicant. What other rights he should have exercised is not stated, but there is absolutely no evidence to show that he has not exercised every right as an American citizen. If the right of applicant to land is to be made dependent upon the opinion of some officer that the father should have taken more advantages of his rights as an American citizen than to live in this country, then the record should clearly show wherein the father was delinquent in this regard. This record does not so show, and the statements quoted are manifestly unfair reasons employed in weighing the evidence to applicant's detriment. Upon the whole record the court is of the opinion that applicant's right to enter was not inquired into in that spirit described by Judge Morton in the following terms:

> "The essential thing is that there shall have been an honest effort to arrive at the truth by methods sufficiently fair and reasonable to amount to due process of law.' *Chin Loy You* [D. C.], 223 Fed. 833."

This appellant arrived at this port at a time when Rule 9 was in full force, and when the condition mentioned by Judge Dooling in *Tom Toy Tin, supra*, was in existence. The application of the appellant to enter the United States was denied under the provisions of said Rule 9, and also upon the ground that the immigration officials did not believe the relationship existed. [Tr. 22 and 23.] The denial under the provisions of Rule 9 was upon the hypothesis that the native-born

father being dead prior to the application of his son to enter the United States, that there was no citizenship of the father in existence at the time of the application which could be communicated to the son. Upon the question as to whether or not the conclusion that the appellant was not the son of the person claimed as his father, we call attention to the memorandum prepared for the Secretary, which shows, we contend, evidence of unfairness. At the head of this memorandum the following appears:

> "Favorable parts of record,
> "Only the fact the father said in 1908 that he had one son.
> "Adverse feature; age of boy and unconvincing testimony."

With respect to the statement that the only favorable part of the record was that the father said in 1908 that he had one son, it is strange to relate that in the memorandum itself we find the following:

> "The alleged uncle and another Chinese have testified in support of this boy's admissibility. Their stories agree in the main. It was not possible to secure a connected statement from applicant and he contradicted the witnesses in reference to most of the material points about which he would (or could) give information."

The real reason for the rejection of this applicant, as disclosed by the supplemental memorandum, made after the case had been orally argued by counsel at Washington, would appear the following, which is quoted from the continuation of the memorandum:

> "What puzzles the Bureau is to find an answer to the question why, as a matter of practical common sense, the uncle should bring this little child over here, when his own wife and children are in China and obviously the proper place for the child is in a home where he can have the attention of some woman to take the place of his own dead mother. The very impossibility of answering this question satisfactorily upon the hypothesis that the claims made are true leads naturally and almost inevitably to the idea that the story is not true and that the applicant is the son of some Chinaman or some Chinese couple already in this country, but not entitled under the law to bring a child here."

In weighing and considering the above memorandum, it must be borne in mind that just prior to writing this memorandum the opinion of the Attorney General of the United States had been rendered wherein Rule 9 was held to be in violation of the provisions of Section 1993 of the Revised Statutes. It is contended upon appeal that the reason urged for the rejection of this applicant was in substance and effect the fact that his father was dead and that the record disclosed an attempt to carry out the idea of the original rejection by using the circumstance of the father's death to discredit the evidence presented instead of considering the father's death as an absolute bar to the applicant's admission. Attention is directed to the letter from the appellant's attorneys in Washington, Messrs. Ralston & Richardson, in which the reason for the rejection is given. [Tr. 20-21.]

This letter was introduced in evidence at the hearing without objection, so that the facts therein stated might be considered in the record as evidence. The same may

also be said of the letter of June 22nd, 1916, of the Assistant Commissioner General of Immigration in answer thereto. In this last mentioned letter the following admission appears:

> "On the second the Bureau might add that it is quite possible (indeed its recollection is quite clearly to that effect) that in the course of the discussion of the case when it was being orally argued, an intimation may have been given counsel that if this boy had been coming to his own father, instead of to an alleged uncle, the weight and effect of the evidence would have been somewhat different; . . . . . "

The appellant contends in this matter that what actually was done in this case was to determine the rights of this appellant adversely because of the hostility to the claims of citizenship such as were presented by this appellant, and which was the subject of Judge Dooling's decision particularly in *Lee Dung Moo, supra,* and *Tom Toy Tin, supra.*

The circumstances developed in the record having to do with the Doctor's opinion as to the age of this applicant, and an attempt to discredit his entire case by reason thereof, we have this to say: According to the sworn testimony of this case, which is without disagreement, this appellant was eight years of age when he applied to enter the United States. That he was small or underdeveloped for his years is freely conceded. The examining inspector thought that the appellant was not over five or six years of age. The Medical Examiner of Aliens gave it as his opinion that the appellant was not over five years of age. It is very

possible that the lack of attention and care that was the lot of an orphan boy in China may be responsible for his under physical development, and may have been an actuating factor in the bringing of the appellant to this country. The difference in age is very slight, and one that the experience of mankind might readily make allowances for. It does not appear that the opinion of the Medical Examiner was based upon any scientific data and would appear to be quite an arbitrary expression of personal opinion. This Court had the same feature before it in the case of *Woo Hoo,* 243 Fed. 541, wherein the Court held, on page 543 thereof, as follows:

> "The doubt expressed by the Commissioner General as to the alleged age of the applicant was based upon a certificate of two surgeons that after a careful consideration of the physical characteristics, they were of the opinion that 'his age is within one year either way of 23 years.' It is not represented that the certificate is based upon any scientific data or otherwise than upon the general appearance of the applicant. Upon such a question the opinion of a surgeon is believed to be of no greater value than that of a layman, and in either case it has but little probative value to show a difference of age of only two years."

As a principle of law, it is felt that the immigration authorities acted arbitrarily in disregarding the testimony on behalf of this appellant. The immigration authorities prejudicially considered his testimony when they themselves were not able to determine whether the appellant "would (or could) give information." Being unable to determine this point, it is contended that it was an arbitrary action on their part to conclude the

point adversely to him. The way testimony of children of such tender years should be weighed is amply set forth in Jones on Evidence. We quote the following from this work:

> "Section 722 [740] Degree of Credit to be given such testimony.
>
> "Although, in order to prevent a failure of justice, it is often necessary to receive the evidence of children of tender age, every practitioner of experience is sensible of the embarrassments and danger which attend the admission of such evidence. It is true, it may be urged, that the natural language of the child is that of innocence and truth, and that its testimony is apt to be free from the prejudice or sinister motives which too often affect the testimony of adults. On the other hand, it may be urged with equal force that this class of testimony is open to several serious objections. There is the uncertainty whether the witness has the proper conception of the obligation of an oath. Then there is the still greater danger that such testimony may have been prompted and inspired by unscrupulous and interested persons. Says Mr. Stephens: 'A child will have been taught to say that, if it tells a lie, it will go to the bad place when it dies (which is usually taken to show that it knows the meaning of an oath) long before it has any real notion of the practical importance of its evidence in a temporal point of view; and also long before it has learned to distinguish between its memory and its imagination, or to understand in the least degree, what is meant by accuracy of expression. **It is hardly possible to cross examine a child, for the test is too rough for an immature mind.** However gently the questions may be put, the witness grows confused and frightened, partly by the tax on its memory, partly by the strangeness of the scene, and the result is that its evidence goes to the jury practically unchecked, and has

> usually greater weight than it deserves, for the sympathies of the jury are always with it. This is a considerable evil, for in infancy the strength of the imagination is out of all proportion to the power of the other faculties; and children constantly say what is not true, not from deceitfulness, but simply because they have come to think so, by talking or dreaming of what has passed. The evil, however, is one which the law cannot remedy. It would be a far greater evil to make children incompetent witnesses up to a certain age. The only remedy is that judges should insist to juries more strongly than they generally do on the unsatisfactory nature of the evidence of children and on the danger of being led by sympathy to trust in it."

In finally submitting this matter, we feel that the appellant has affirmatively established his right to enter the United States as a citizen thereof, and that the denial of said right by the Immigration authorities was in effect to deny to this appellant the benefits of Section 1993 of the Revised Statutes, for the reason which prompted the Department officials to promulgate Rule 9. In other words we feel it is a duplication of what was so aptly described by Judge Dooling in *ex parte Lee Dung Moo, supra*, wherein he said:

> "The question of relationship should therefore be fairly investigated, with a view to ascertain the truth, and with a perfect willingness to admit him under this law, instead of being investigated in a spirit hostile to the law, which, lacking the power to repeal, accomplishes the same result by denying to it effect. When one's right as a citizen is examined in that spirit, the hearing given him appears to me to be anything but fair."

This appellant was released upon parole by Judge Dooling at the hearing, and has remained upon parole

in the custody of his counsel ever since. He has been residing with his uncle in Los Angeles and attending the public schools there. It is felt that in no wise does this case present any substantial or even real evasion or violation of the Chinese Exclusion or Restriction Acts, but on the contrary, is one in which the rights of American citizenship have been amply and fully proved and established. We feel that the appeal should be sustained with directions to issue the writ as prayed for, so that this appellant may be discharged from custody.

Respectfully submitted,

GEORGE A. MCGOWAN,

Attorney for Appellants.